

CALIFORNIA COASTAL COMMISSION

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Filed: 2/21/03
49th Day: 4/10/03
180th Day: N/A
Staff: CP-LB
Staff Report: 3/20/03
Hearing Date: April 8, 2003
Commission Action:

**Tu8b****STAFF REPORT: APPEAL**
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Manhattan Beach

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-MNB-03-075

APPLICANT: Association of Volleyball Professionals (AVP)

AGENT: Matt Gage, AVP Tour Director

PROJECT LOCATION: Beach area south of the Manhattan Beach Pier, City of Manhattan Beach, Los Angeles County.

PROJECT DESCRIPTION: Appeal of City of Manhattan Beach local coastal development permit approving the 2003 Manhattan Beach Open Volleyball Tournament on August 7-10, 2003.

APPELLANTS: William Victor & Harry Ford

SUBSTANTIVE FILE DOCUMENTS:

1. Local Coastal Development Permit No. CA 03-1 (2003 Manhattan Beach Open), City Council Resolution No. 5811, 2/4/03 (Exhibit #4).
2. City of Manhattan Beach Local Coastal Program (LCP), certified 5/12/94.
3. City of Manhattan Beach LCP Amendment Request No. 1A-97, Rejected 5/13/97.
4. City of Manhattan Beach LCP Amendment Request No. 3-97, Not Certified.
5. Appeal/Permit No. A-5-MNB-97-84 (1997 Manhattan Beach Open), 5/13/97.
6. Appeal No. A-5-MNB-99-111 (1999 Manhattan Beach Open), NSI 6/11/99.
7. Appeal No. A-5-MNB-01-343 (2001 Manhattan Beach Open), NSI 10/8/01.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that the appeals raise a **substantial issue** in regards to the locally approved event's conformity with the City of Manhattan Beach Certified Local Coastal Program and the public access policies of the Coastal

Act. If the Commission adopts the staff recommendation, a de novo hearing will be scheduled at a future Commission meeting. **The motion to carry out the staff recommendation is on Page Six.**

I. APPELLANTS' CONTENTIONS

On February 4, 2003, after a public hearing, the Manhattan Beach City Council approved with conditions Local Coastal Development Permit No. 03-01 allowing the Association of Volleyball Professionals (AVP) to conduct the 2003 Manhattan Beach Open Volleyball Tournament on the public beach on August 7-10, 2003, with set-up starting on August 4th (Exhibits #4-6). The permit authorizes bleacher seating for 4,500 spectators, including the general public and VIPs. Spectators are not being required to pay an admission fee. While the general public may view the proposed event on a free first-come, first-served basis, purchasers of AVP's VIP packages would have access to the reserved seating areas closest to the center court (Exhibit #9).

On February 21, 2003, two appeals of the City's action were received in the Commission's South Coast District office in Long Beach: one appeal by William Victor (Exhibit #7) and one by Harry Ford (Exhibit #8).

The appeal submitted by **William Victor (Exhibit #7)** contends that the proposed event:¹

1. Violates provisions of the City of Manhattan Beach certified Local Coastal Program.
2. Violates California Coastal Act Sections 30251 through 30254.
3. Interferes with the scenic integrity of the coast (e.g. excessive commercialism and advertising on over 300 banners, signs, and inflatable beer cans over 30 feet high).
4. Is not exempt from the California Environmental Quality Act (CEQA).
5. Takes the beach from normal public use for more than two days.
6. Includes paid seating for VIP customers, even though the LCP and the local approval allow only "sporting events for which no admission is charged" on the beach (OS District).
7. Does not have an adequate traffic, parking and beach shuttle plan.
8. Does not have an adequate parking supply because the 155-space Metlox site (Parking Lot M) is currently closed for the construction of a parking structure, and the Civic Center parking lot is more restricted than before.
9. Excludes the public from the beach and turns the Manhattan Beach coastal zone into another commercial zone.
10. Includes unlimited bleacher seating on the pier that may restrict public access and be unsafe.
11. Includes no evidence that "the AVP alone was to apply for the coastal permit for the pier bleachers."
12. Causes littering and includes excessive advertising, unwholesome advertising (e.g. beer, adult magazines, birth control products), and blaring public address systems (noise) that negatively affects the beach experience for families and children.

¹ The seventeen reasons listed for the appeal correspond numerically to the seventeen points enumerated by William Victor in his appeal, which is attached to this staff report as Exhibit #7.

13. Takes four public beach parking lots from beach goers.
14. Expands the seating for the event beyond that which has been previously permitted by the Coastal Commission.
15. Prevents the City from exercising independent judgment when reviewing the permit application because City officials benefit personally from the event.
16. (Mr. Victor intends to supplement this appeal at or before the scheduled hearing).
17. Is actually a "permanent " event rather than a temporary event, and should be reviewed accordingly for its cumulative effects on coastal resources.

The appeal submitted by **Harry Ford (Exhibit #8)** contends that:²

1. **LCP.** The proposed event's lack of an adequate traffic, parking and beach shuttle plan violates the provisions of the City of Manhattan Beach certified Local Coastal Program (LCP), including LUP Policies I.A.2, I.B.1, I.C.2 & Program II.B.14.

POLICY I.A.2: The City shall encourage, maintain, and implement safe and efficient traffic flow patterns to permit sufficient beach and parking access.

POLICY I.B.1: The City shall encourage transportation service to mitigate excess parking demand and vehicular pollution. All transportation/ congestion management plans and mitigation measures shall protect and encourage public beach access.

POLICY I.C.2: The City shall maximize the opportunities for using available parking for weekend beach use.

PROGRAM II.B.14/POLICY I.C.17: Provide signing and distribution of information for use of the Civic Center parking for beach parking on weekends days.

2. **City Costs.** The City has not properly disclosed the City's costs for the event or the amount of fees waived for the applicant.
3. **Skydivers.** The proposed skydivers' landing on the beach has not been properly evaluated for safety and permitting issues.
4. **Exclusive Use.** The proposed event, with its segregated VIP areas, would exclude the general public from the beach and from public beach parking facilities. The event's paid seating areas for VIP customers violate the provision of the LCP that limits beach events to "sporting events for which no admission is charged" (OS District).
5. **Inflatables.** Excessive advertising is negatively affecting visual resources. The local coastal development permit should limit signage and inflatables to maintain views of the beach and surrounding areas.
6. **Agreement Issues.** The local coastal development permit should include enforcement and monitoring provisions in order to address lingering issues and unresolved violations from past years' events.

² The twelve reasons listed for the appeal correspond numerically to the twelve points enumerated in Harry Ford's appeal, which is attached to this staff report as Exhibit #8.

7. **Title 12.** The local coastal development permit should require the City to be in compliance with Title 12 of the Municipal Code, which regulates commercial and business activities on the beach.
8. **Pier Operating Agreement.** The proposed bleachers on the pier would restrict public access and may conflict with the City's Operating Agreement with the State.
9. **Lessons Learned.** City staff should be required to complete a follow-up report that analyzes the effects of this year's event on the City and proposes recommended changes for future events.
10. **Safety Issues.** The AVP should be required to implement specific safety procedures during set-up and take-down and during the event, including the provision of crossing guards on the bike path.
11. **LCP Amendment Request No. 3-97.** The local coastal development permit should require compliance with the temporary event provisions adopted by the Commission on February 3, 1998 pursuant to its approval of LCP Amendment Request No. 3-97.³
12. **Notice, Application & Public Hearing.** The public notice for the local coastal development permit was inadequate because some of the interested persons from prior years were not on the mailing list. The application was incomplete because of lack of detail, including the lack of identified beach access corridors, pier accessways, valet and VIP parking areas, and reserved VIP seating areas. Materials submitted to the City by the appellant were not included in the staff report.

II. LOCAL GOVERNMENT ACTION

The City's only public hearing regarding Local Coastal Development Permit No. 03-1 occurred on February 4, 2003 in front of the Manhattan Beach City Council. On February 4, 2003, the City Council adopted Resolution No. 5811 and thus approved Local Coastal Development Permit No. 03-1 for the 2003 Manhattan Beach Open Volleyball Tournament (Exhibit #4). The City Council also approved an agreement ("the Agreement") with the Association of Volleyball Professionals (AVP) to partner with the City of Manhattan Beach (CMB) to produce the event (Exhibit #6). The action by the City Council was not appealable at the local level.

On February 7, 2003, the City's Notice of Final Local Action for Local Coastal Development Permit No. 03-1 was received in the Commission's South Coast District office in Long Beach. The Commission's ten working day appeal period was then established and noticed. On February 21, 2003 the Commission received the two appeals of the City's approval.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development

³ Local Coastal Program Amendment Request No. 3-97, although approved by the Commission with modifications, was never certified as part of the LCP because the City did not accept the Commission's suggested modifications.]

permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff [Coastal Act Section 30603(a)]. In addition, an action taken by a local government on a coastal development permit application may be appealed to the Commission if the development constitutes a "major public works project" or a "major energy facility" [Coastal Act Section 30603(a)(5)]. In Manhattan Beach, the inland boundary of the appealable area of the City's coastal zone, located three hundred feet from the inland extent of the beach, has been mapped within the Manhattan Avenue right-of-way (Exhibit #1). The proposed event is located entirely within the mapped geographic appeals area.

The City of Manhattan Beach Local Coastal Program (LCP) was certified on May 12, 1994. Section 30603(a)(1) of the Coastal Act identifies the proposed project site as being in an appealable area by virtue of its location on the beach and between the sea and the first public road paralleling the sea.

Section 30603 of the Coastal Act states:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a coastal development permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The grounds for appeal of an approved local coastal development permit in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeals of the local approval of the proposed project. Sections 30621 and 30625(b)(2) of the Coastal Act require a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

Commission staff recommends a finding of substantial issue. If there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will schedule a de novo public hearing on the merits of the application at a subsequent Commission hearing. A de novo public hearing on the merits of the application uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that an approved application is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue. The Commission's finding of substantial issue voids the entire local coastal development permit action that is the subject of the appeal.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds for the appeals regarding conformity of the project with the City of Manhattan Beach certified Local Coastal Program and the public access policies of the Coastal Act, pursuant to Public Resources Code Section 30625(b)(2).

Staff recommends a **NO** vote on the following motion:

MOTION

*"I move that the Commission determine that Appeal No. A-5-MNB-03-075 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed."*

Failure of this motion will result in a de novo hearing on the application and adoption of the following resolution and findings. A majority of the Commissioners present is required to pass the motion.

Resolution to Find Substantial Issue for Appeal A-5-MNB-03-075

The Commission hereby finds that Appeal No. A-5-MNB-03-075 presents a substantial issue with respect to the grounds on which the appeals have been filed

under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access policies of the Coastal Act.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Event History

On February 4, 2003, the Manhattan Beach City Council approved with conditions Local Coastal Development Permit No. 03-1 permitting the AVP to conduct the 2003 Manhattan Beach Open Volleyball Tournament on the beach in August (Exhibits #3-6). The local coastal development permit includes the following provisions:

1. Conformance with the City-approved 2003 Manhattan Beach Open/AVP Agreement attached as Exhibit #6 (See Conditions: Exhibit #4, p.2).
2. No paid admission, but some reserved seating areas for AVP VIPs (Exhibit #6, p.2).
3. Limit the total number of bleacher seats to a maximum of 4,500.
4. Bleachers on the pier (Exhibit #3, p.1).
5. AVP use of both lower pier public parking lots (71 parking spaces), one upper pier parking lot (40 spaces), and all on-street parking along Manhattan Beach Boulevard below Ocean Drive (about 30 spaces).
6. No more than six inflatable advertising signs (Exhibit #3, p.1).
7. A free public beach shuttle service between a remote parking lot (TRW) and the downtown on Saturday and Sunday.
8. Sponsors' tents, a stage and portable toilets (Exhibit #3, p.1).

The tournament would be held on the public beach on August 7-10, 2003, with set-up starting on Monday, August 4th (Exhibits #4-6). The location of the annual event is a three-acre sandy beach area (450' x 300') located on the south side of the Manhattan Beach Pier (Exhibit #3, p.1). Approximately 24 volleyball courts currently occupy the event site. There will not be a fence installed around the perimeter of the event area, and public access to the pier and the shoreline may not be blocked at any time. The City Agreement requires that the AVP complete all take-down activities and remove all equipment from the beach before by 6 PM Tuesday, August 12, 2003 (Exhibit #6, p.4).

This year, the local coastal development permit authorizes bleacher seating for 4,500 spectators, including the general public's area and VIP areas. Spectators are not being required to pay an admission fee. While the general public may view the proposed event on a free first-come, first-served basis, purchasers of AVP's VIP packages would have access to the reserved seating areas closest to the center court (Exhibit #9). Several tents and interactive areas for event sponsors are included in the event plan (Exhibit #3, p.1).

Event History

The annual Manhattan Beach Open Volleyball Tournament has a long tradition that dates back to 1960. During all past events, the general public has been able to view the event on a first-come, first-served basis from the sand, the temporary bleachers, or from the pier. No

admission fee has been required for spectators, and the bleachers have always been open to the general public. Even though the event area can get quite congested, the City maintains public access to the pier and along the water, and the bicycle path is kept open (bikes must be walked).

The event has always been located on the south side of the Manhattan Beach Pier in a sandy area owned and operated by the Los Angeles County Department of Beaches and Harbors (Exhibit #2). The event area is occupied by several sets of sand volleyball courts used for public recreation. Although the beach is actually owned by Los Angeles County, it falls within the City limits of Manhattan Beach and the within the jurisdiction of the certified City of Manhattan Beach LCP. As property owners, the Los Angeles County Department of Beaches and Harbors regulates the many special events that occur on the beach. The Manhattan Beach Open is one of several annual volleyball tournaments and other special events that occur on the beach each summer with the permission of the Los Angeles County Department of Beaches and Harbors.

As previously stated, the annual Manhattan Beach Open volleyball tournament has a long tradition that dates back to 1960. Even though there are no provisions in the certified LCP that allow the City to exempt temporary events on the beach from permit requirements, the first local coastal development permit for the annual event was not approved until 1997 when the City approved Local Coastal Development Permit No. 10-97.⁴ Prior to 1997, the City asserted that the event did not fall under the definition of development as defined in the certified LCP.

On March 18, 1997, the City of Manhattan beach approved Local Coastal Development Permit No. 10-97 for the 1997 Miller Lite Manhattan Beach Open Volleyball Tournament. The City required the VP to apply for a local coastal development permit for the volleyball tournament because the AVP was proposing to charge admission fees to spectators. The City's approval would have allowed the AVP, for the first time ever, to sell tickets to all of the seating for the final matches of the Manhattan Beach Open. Subsequent to the City's approval of the local coastal development permit, three appeals of the local permit were submitted to the Coastal Commission. The primary ground of the appeal was that the proposed event, with the City-approved admission fees for spectators, was inconsistent with the certified LCP's Open Space (OS) land use designation for the beach. The certified OS land use designation permits "sporting events for which no admission is charged", but does not permit sporting events for which admission is charged.

On May 13, 1997, the Commission found that a substantial issue existed with respect to the grounds of the appeals (See Appeal A-5-MNB-97-84). Also on May 13, 1997, the Commission held a public hearing on a City of Manhattan Beach LCP amendment request that would have added "sporting events for which admission is charged" to the OS permitted use list (See LCP Amendment Request No. 1A-97). On May 13, 1997, the Commission rejected Manhattan Beach LCP Amendment Request No. 1A-97, and approved the de novo permit for the 1997 event as a free event (See Appeal A-5-MNB-97-84). The Commission denied the applicants'

⁴ The Commission certified the City of Manhattan Beach LCP on May 12, 1994.

request to charge admission fees to spectators. Ultimately, Coastal Development Permit A-5-MNB-97-84 was never issued, and the 1997 Miller Lite Manhattan Beach Open was cancelled.

In its action on Appeal A-5-MNB-97-84 the Commission found that, pursuant to the certified LCP, a coastal development permit was required for the annual volleyball tournament because it falls within the definition of development contained in Section A.96.030 of the certified LCP and Section 30106 of the Coastal Act ("Development" means...the placement or erection of any solid material or structure;...change in the intensity of use of water, or of access thereto;...), and that the certified LCP contains no provision for the exclusion or exemption of the proposed event. Furthermore, admission fees for spectators may not be charged for sporting events on the beach because such a use is not permitted by the certified LCP.

In October of 1997, the City submitted LCP Amendment Request No. 3-97 to the Commission in an attempt to insert new provisions into the certified LCP to permit and exempt temporary events on the beach. As stated above, there currently are no provisions in the LCP that allow temporary events on the beach to be exempted from permit requirements, regardless of size or type of event. On February 3, 1998, the Commission approved LCP Amendment Request No. 3-97 with suggested modifications that would have laid out specific LCP standards for the exempting and permitting of temporary events on the beach. The City, however, declined to accept the Commission's suggested modifications, and the Commission's action on LCP Amendment Request No. 3-97 has lapsed. Therefore, there are still no provisions in the Manhattan Beach certified LCP to exempt temporary events on the beach.

There is no record of the Manhattan Beach Open volleyball tournament being held or permitted in 1998.

In 1999, the City and the AVP significantly scaled down from prior years the size and scale of the Manhattan Beach Open Volleyball Tournament. The spectator admission fees proposed and ultimately denied in 1997 were not proposed again. In order to enhance beach access for event visitors and other beach goers, the AVP provided a shuttle service to and from the proposed event on Saturday and Sunday. The August 28-29, 1999 event, approved by City of Manhattan Beach Local Coastal Development Permit No. 99-4, included:

1. No paid seating.
2. Reduction in the total number of bleacher seats to a maximum of 1,500.
3. Use of 45 parking spaces in the lower pier public parking lots.
4. Reduction in the number of tournament days from three to two.
5. Reduction in the number of days needed for set-up (3) and take-down (1).
6. Six tents less than the 1996 event.
7. An AVP agreement to pay the City's direct costs for the event.

City of Manhattan Beach Local Coastal Development Permit No. 99-4 was appealed to the Coastal Commission (See Appeal A-5-MNB-99-111). On June 11, 1999, the Commission found that no substantial issue existed with the City's approval of Local Coastal Development Permit No. 99-4 for the 1999 Manhattan Beach Open because it conformed entirely with the certified

Manhattan Beach LCP and the public access policies of the Coastal Act. The 1999 Manhattan Beach Open volleyball tournament was held as scheduled.

In 2000, the Manhattan Beach Open Volleyball Tournament was conducted without the benefit of a local coastal development permit because the City determined that a coastal development permit is required only if bleachers are proposed as part of the event.

The 2001 Manhattan Beach Open Volleyball Tournament (held August 23-26, 2001) approved by Local Coastal Development Permit No. CA 01-20 included:

1. No authorization for any paid seating.
2. Maximum of 1,500 bleacher seats (increased to 3,000 by an amendment).
3. Use of 45 parking spaces in the lower pier public parking lots.
4. Four tournament days (August 23-26, 2001).
5. Set-up starts Wednesday, August 22 & takedown completed Monday, August 27.
6. Tents and stage.
7. Shuttle service on Saturday and Sunday.

City of Manhattan Beach Local Coastal Development Permit No. 01-20 was not appealed to the Coastal Commission. A subsequent permit amendment, however, was appealed to the Coastal Commission (See Appeal A-5-MNB-01-343). The subject of the appeal, Local Coastal Development Permit Amendment No. CA 01-31, amended the event layout that had been previously approved as part of Local Coastal Development Permit No. CA 01-20. The City deleted its 1,500-person limit on bleacher capacity and approved the permit amendment to increase the bleacher capacity to a total of 3,000 persons. On October 8, 2001, after the 2001 tournament was already over, the Commission found that no substantial issue existed with the City's approval of Local Coastal Development Permit Amendment No. CA 01-31.

The 2002 Manhattan Beach Open volleyball tournament, held August 6-13, was approved by Local Coastal Development Permit No. CA 02-09. The 2002 event included free public admission and 4,500 bleacher seats. Local Coastal Development Permit No. 02-09 was not appealed to the Coastal Commission.

B. Factors to be Considered in Substantial Issue Analysis

Section 30625 of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it finds that the appeal raises no significant question as to conformity with the certified LCP or there is no significant question with regard to the public access policies of Chapter 3 of the Coastal Act. In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5. Staff is recommending that the Commission determine that the appeals raise a **substantial issue** in regards to the grounds of the appeals for the reasons set forth below.

C. Substantial Issue Analysis

As stated in Section III of this report, the grounds for appeal of a coastal development permit issued by the local government after certification of its Local Coastal Program (LCP) are specific. In this case, the local coastal development permit may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal.

In this case, the appellants contend that the City's approval of the proposed event does not conform to the certified LCP and that it is inconsistent with the public access policies of the Coastal Act. Even though both appellants have included in their grounds for appeal many assertions that go beyond the allowable grounds for appeal, the substantial issue determination is limited solely to the issue of whether the local approval conforms with the LCP and the public access policies of the Coastal Act.

In this regard, the Commission must determine if the City's approval of the proposed event raises a substantial issue in regards to the public access policies of the Coastal Act. The following are the relevant public access policies of the Coastal Act.

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public

safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states, in part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 of the Coastal Act states, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

The certified Manhattan Beach LCP contains specific policies that apply to all development located within the City's coastal zone. All development approved within the City's coastal zone, including the proposed event, must comply with the policies of the certified Manhattan Beach LCP. First, the proposed project must qualify as a permitted use within the Open Space (OS) land use designation of the beach. Secondly, the proposed project must comply with the following relevant LCP policies:

POLICY 1.A.2: *The City shall encourage, maintain, and implement safe and efficient traffic flow patterns to permit sufficient beach and parking access.*

POLICY I.A.8: *The City shall maintain visible signage to El Porto accessways and beach parking, along Highland Avenue.*

POLICY I.B.1: *The City shall encourage public transportation service to mitigate excess parking demand and vehicular pollution. All transportation/congestion management plans and mitigation measures shall protect and encourage public beach access.*

POLICY I.B.3: *The City shall encourage pedestrian and bicycle modes as a transportation means to the beach.*

POLICY I.B.6: *The Strand shall be maintained for non-vehicular beach access.*

POLICY I.C.2: *The City shall maximize the opportunities for using available parking for weekend beach use.*

POLICY I.C.3: *The City shall encourage additional off-street parking to be concentrated for efficiency relative to the parking and traffic system.*

POLICY I.C.9: *Use of existing public parking, including, but not limited to, on-street parking, the El Porto beach parking lot, and those parking lots indicated on Exhibit #9 (in the certified LCP), shall be protected to provide public beach parking...*

POLICY: *The beach shall be preserved for public beach recreation. No permanent structures, with the exception of bikeways, walkways, and restrooms, shall be permitted on the beach.*

PROGRAM II.A.6: *Consider the establishment of alternative transportation systems and park-mall facilities, including a shuttle service to the El Porto beach area.*

PROGRAM II.B.13: *Improve information management of the off-street parking system through improved signing, graphics and public information and maps.*

PROGRAM II.B.14: *Provide signing and distribution of information for use of the*
POLICY 1.C.17 *Civic Center parking for beach parking on weekend days.*

Therefore, the Commission must determine whether the appeals raise a substantial issue with regard to the conformity of the proposed event with the above-stated LCP and Coastal Act policies. The staff recommends that the Commission determine that the appeals raise a **substantial issue** in regards to the locally approved event's conformity with the City of Manhattan Beach Certified Local Coastal Program and the public access policies of the Coastal Act.

The appellants assert that the proposed event would obstruct public access, block public views, add to parking problems and traffic congestion, create noise that would interfere with enjoyment of the beach, and involves a charge for admission (Exhibits #7&8). Although the proposed event will not physically block access to the water, it will impact the public's ability access and use the coast in two ways: 1) by increasing the demand for public parking in the area while reducing the supply of available public parking, and 2) by restricting the use of a portion of the sandy beach to a specific group of people.

Traffic and Parking

In regards to public beach parking, the crowds generated by the proposed event, in association with the event's reserved use of public parking areas, will negatively affect beach goers' ability to find a parking space near the beach. The Commission has consistently found that a direct relationship exists between the provision of adequate parking and availability of public access to the coast. On both Saturday and Sunday, the proposed event is expected to attract over 6,000 persons to an already crowded beach area. The additional visitors drawn by the proposed event will overburden the limited beach parking supply. There is simply not enough public parking available in the downtown area to accommodate all of the people who attempt to visit Manhattan Beach during summer weekends. Add to this the City's reservation for the AVP of 141 of the 161 parking spaces closest to the pier, and the ability to find public parking near the pier will be nearly impossible.

As required by Policies 1.A.2, 1.B.1, 1.C.2 and 1.C.17 (Program II.B.14) of the certified LCP, the City is required to implement safe and efficient traffic flows, encourage transportation service, maximize parking for weekend beach use, and provide signing and information to do so. Although the local coastal development permit provides reserved parking for the AVP and its VIPs, it does not include a detailed parking and traffic management plan to provide parking for the general public (Exhibit #6, p.3). The City has required the AVP to pay for a beach shuttle service on Saturday and Sunday, but the local permit lacks adequate specificity and detail about how the shuttle service would be advertised and implemented (Exhibit #6, p.4). The City permit does not contain pertinent information regarding: whether the AVP would actually operate the shuttle system (the AVP must pay for the system), the amount of parking provided at TRW, restrictions on the use of the free parking and shuttle by non-ticket holders for coastal access, the shuttle schedule, methods for publicizing the shuttle, or other details that the Commission needs in order to determine if the proposed event's impacts on public access will be mitigated by the requirements of the City's local coastal development permit.

The required shuttle service is necessary to mitigate the increase in vehicle congestion, parking demand and vehicular pollution caused by the large numbers of persons who will drive to the area to attend the annual volleyball tournament. The event's impacts on the public parking supply have been made worse by increasing the number of parking spaces that the AVP may reserve for use by VIPs, equipment trucks, television equipment and event personnel. The City approval permits the reservation of all 71 parking spaces located in the lower south and lower north public beach parking lots, plus one of the two upper pier lots, and the on-street parking on Manhattan each Boulevard (below Ocean Drive) for use by the AVP (Exhibit #6, p.3). That is, the City has granted the AVP the right to use 141 of the 161 public parking spaces closest to the pier.

Therefore, the proposed event is not consistent with LCP Policy I.C.2 which requires the City to maximize the opportunities for using available parking for beach use. Staff recommends that the City's parking and traffic plan does raise a substantial issue in regards to the consistency of the City's approval with LCP Policies 1.A.2, 1.B.1, 1.C.2 and 1.C.17, and the public access policies of the Coastal Act.

Exclusive Use of the Beach

The second way that public access will be affected by the proposed event is the exclusiveness of the proposed temporary use of the beach. For eight days, from set-up to take-down, the general public will be excluded from most of the sandy beach area and public volleyball courts on the event site. The proposed event will occupy a 300-foot wide portion of the approximately 350-foot wide beach area that exists between the bike path and mean high tide line (MHTL). Therefore, there will be a 50-foot wide-open area preserved along the shoreline for lateral public access (Exhibit #3, p.1). Vertical access to the water will be available on the north side of the pier and south of the event site (Exhibit #2).

The exclusive use of public beaches has always been an issue of prime importance to the Commission in terms of impacts on public access. Because of the importance of the public access issues involved with the proposed event, it is important that the Commission have the opportunity to review the City's approval. The Commission will have the opportunity to review the City's action on the proposed event at the subsequent de novo hearing.

Free Admission or Paid Admission

The City Agreement, adopted by reference as part of the local coastal development permit, states that, "No admission shall be charged" (Exhibit #6, p.2). The prohibition on charging admission is based on the certified LCP's Open Space (OS) land use designation for the beach. The certified OS land use designation permits "sporting events for which no admission is charged", but does not permit sporting events for which admission is charged. Therefore, both the LCP and the local coastal development permit prohibit admission to be charged for entry to the event.

Both appellants assert that the AVP is selling VIP packages for the event that include reserved seating areas around the center court, and that the VIP area would exclude the general public from the beach. The AVP's website includes information about its VIP packages (Exhibit #9). The City Agreement authorizes the AVP to reserve specific seating areas for VIPs (Exhibit #6, p.2). Both the AVP and the City, however, make a distinction between charging admission to the event and selling membership to restricted areas within the event. While admission to the event is free to the general public, the additional perks that come with VIP membership are not free.

Whether the proposed VIP reserved seating areas conflict or conform with the LCP prohibition on charging admission to sporting events is a substantial issue that should be reviewed and considered by the Commission. Part of the issue is how much of the available seating is reserved for VIPs and how much is available for free access by the general public. The local coastal development permit allows VIP seating on risers located along one sideline and both end zones of the center court, and one entire end zone bleacher (Exhibit #3, p.1). The City Agreement allows the City to approve additional VIP seating (Exhibit #6, p.2). Unlimited or

expansive reserved seating areas may exclude the general public from the event and from the public beach. Section 30211 of the Coastal Act states, in part, that development shall not interfere with the public's right of access to the sea, including, but not limited to, the use of dry sand. Therefore, a substantial issue exists with respect to the grounds of the appeal.

Scale of Development and Visual Resources

The capacity and size of the bleachers and other temporary development is an important issue to be considered when reviewing a proposal for a temporary event on the sandy beach. In 1997, the applicant requested and received approval for bleacher seating for 6,800 persons, but that event was cancelled. In the years following 1997, the event was substantially downsized in regards to the amount of bleacher seating, as shown below:

1998: No record
1999: 1,500 seats
2000: 0 seats?
2001: 1,500 increased to 3,000
2002: 4,500
2003: 4,500 proposed

This year, the proposed event is expected to attract over 6,000 persons to an already crowded beach area on both Saturday and Sunday. It cannot be proven that the number of persons attracted to the event is directly related to the capacity of the bleachers. In fact, the majority of the crowd on the afternoon of Saturday, August 25, 2001 was not observing a match in the center court (from bleachers), but was watching a match on a side court with one small bleacher (Exhibit #11). Most of the crowd was standing and sitting on the sand to watch the match. The bleachers were filled to less than half of their capacity at that moment.

Any bleacher or other temporary development that obstructs access to and along the water or blocks access to the pier would not be consistent with the certified Manhattan Beach LCP and the public access policies of the Coastal Act. In this case, the proposed event layout ensures that public access to the shoreline will remain available. Additionally, the proposed 26-foot high bleachers will provide the public with a free recreational opportunity in the form of a professional sporting event with free public admission.

The proposed bleachers on the pier, however, could hinder public access by blocking an area that is usually open for pedestrian passage. Therefore, the proposed bleachers on the pier do raise a substantial issue in regards to the public access policies of the Coastal Act.

The temporary structures and advertising associated with temporary events like the Manhattan Beach Open are highly visible and block public views of the shoreline, but they do not conflict with the certified LCP or Coastal Act policies because they exist on a temporary basis for only a few days. After the event, the structures are quickly removed from the beach (within one day) and the public's view of the shoreline is restored. Therefore, the scenic resources of the coastal zone are protected from any long-term or permanent negative impacts.

Noise

While noise control is not an issue addressed by certified LCP policies, the appellants have raised it as an issue. Specifically, the appellants assert that the local approval does not require adequate noise control. The City approval requires that "All amplified speakers will be placed facing to the west" (Exhibit #6, p.2). Therefore, the City has addressed noise-control as an issue.

Conclusion

The City's approval of the proposed event does not conform to the certified LCP and the public access policies of the Coastal Act. Therefore, the Commission finds that a substantial issue exists with respect to the City's approval of Local Coastal Development Permit No. 03-1.

End/cp